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Bioethics of IVF – the state of the debate

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Editor's note

In this paper, an edited version of an address given at the 1983 Mogul International Management Consultants Ltd Conference on Bioethics and Law of Human Conception in Vitro, *the author, a judge and Chairman of the Australian Law Reform Commission, sums up a number of issues raised at the conference. These include concerns, expressed by Mr Patrick Steptoe and Dr Robert Edwards,* in vitro *fertilisation technique pioneers, about various ethical questions raised by their techniques. Other points covered were: who should be allowed to carry out such techniques; who should receive the benefits of them and who – or what kinds of bodies – should make such decisions. The author concludes that the need to develop institutional means of responding to bioethical questions is 'plainly urgent'.*

The purpose of this paper is to bring together a numbers of questions which arose from the working sessions of the conference. The conference began with a statement by Dr Malcolm Whitehead, Director, Infertility Clinic, King's College Hospital, London, concerning the predicament of human infertility. It was this problem of infertility that gave rise in the first place to the procedures of *in vitro* fertilisation (IVF).

At least 10 per cent of couples, and perhaps up to 20 per cent, are infertile. That amounts to a lot of our fellow citizens. In sum total, it is a lot of aggregate pain, grief, despair and resignation. There are observers who hold that pain is part of the human condition and that it must be accepted. But where scientists offer escape from pain and from a fate that seems too cruel to endure, mere mortals tend to flock to their colours.

Many cases of female infertility grow out of sexually transmitted diseases. Dr Whitehead refrained from making any moral judgements. There are, however, some who hold to the view that infertility is often a punishment for promiscuity. Upon this view, infertility should not be relieved lest promiscuity, forbidden by scripture, be unpunished where nature has rendered its verdict.

The conference was then addressed by Mr Patrick Steptoe and Dr Robert Edwards of Bourne Hall, Cambridge who were both involved in the first successful IVF conception, achieved with the birth of Louise Brown in 1978. Mr Steptoe reviewed his now internationally famous procedures in a paper on Clinical Indications, Laparoscopy and Oocyte Recovery. He detailed the procedures he does follow and those which he does not.

He then discussed a number of important points. The first was the growing success rates being achieved in Britain and elsewhere with IVF procedures. The second was the very low incidence of defective births or of abortions in the case of IVF conceptions. The third was the high success rate and safety of the developed procedures for egg recovery. The fourth was the concern which Mr Steptoe, Dr Edwards and their team had, from the start, exhibited about the ethical questions raised by their techniques.

Nonetheless, Mr Steptoe acknowledged a number of problems which he suggested needed to be addressed. First amongst these was the issue of multiple implantation. Given the higher success rate in achieving pregnancies with multiple embryo implantation, is this procedure justified? Even if it is, what is to be done with any excess fertilised human embryos not needed for the purpose of achieving pregnancy? Some religious spokesmen have proposed that all fertilised embryos should be implanted in the host mother. But if this would sometimes be unsafe, as was suggested by Mr Steptoe, must the safety of the mother and of other implanted embryo(s) be given primacy? A second question raised by Mr Steptoe was whether tubal sealing should be revived to prevent ectopic pregnancies, even though these are relatively rare. The third question was whether embryo transfer should be allowed or whether, before this procedure is followed in Britain, doctors and scientists should wait for guidelines and possibly legislation. According to Lord Ennals, a previous Secretary of State for Health, legislation might not be achieved in Britain for at least five years. Many infertile women will reach 40 in that time. According to Mr Steptoe's figures, successful IVF procedures are rare after 40. In these circumstances, a legitimate question is raised: why wait for guidelines on embryo transfer? If Steptoe and Edwards had waited for guidelines and laws before

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venturing upon IVF itself (as seems to be the Israeli position) might we not, both in Britain and Australia, still be waiting for the development of IVF? The fundamental question is raised: when are scientists and doctors justified in going it alone – in pioneering controversial procedures without waiting for lawyers, philosophers and legislators to provide the social solutions?

Dr Edwards, Reader in Physiology, Cambridge University, then presented his paper IVF and Reimplantation: The Basic Science. Dr Edwards made the point that for many years before theologians and lawyers began to talk of the ethics of IVF, indeed for years before the birth of Louise Brown, he and Mr Steptoe had called for attention to bioethical questions, but without avail. Dr Edwards's telling contribution raised numerous important ethical and, ultimately perhaps, legal questions:

When is a scientist not only at liberty, but even obliged morally, to pursue an experiment that solves problems and reduces pain, even when it opens up other problems?
In a secular and non-authoritarian state, where are the scientists' moral guideposts to be found?
If committees of inquiry are established but legislation or formal and authoritative policy is a long way off, is the scientist justified in treading water for one, two, five or more years when, in the meantime, he could be relieving pain and distress and providing human fulfilment for many?
When a technique becomes international – as IVF has now become – can domestic laws effectively do any more than sort out some of the consequences of the procedures?
Is there a future in the procedure of *in vivo* fertilisation, recently reported to have achieved success in California?
How do we get the politicians in a democracy to address these questions, full as they are of difficulty and controversy?

Dr Edwards and Dr John Loudon, Senior Vice President, Royal College of Obstetricians and Gynaecologists, urged consideration of the licensing of medical practitioners and others engaged in IVF procedures. But, whilst licensing might aim at discouraging a few incompetent practitioners or charlatans, a question is squarely raised as to whether this form of legal regulation can be justified, for example, on a cost/benefit analysis. There would be many, and not only adherents to the Chicago school of economics, who would assert that it might be better to allow the technique of IVF to spread freely throughout the world, if this would rapidly reduce levels of infertility of the maximum number of sufferers and at the maximum speed. On this view, the pain caused to a minority, the victims of incompetence and charlatans, would be far outweighed by the pleasure caused to the large numbers likely to be served by an unlicensed free medical market.

Professor Robert Williamson then spoke on recombinant deoxyribonucleic acid (DNA) and human reproduction. Professor Williamson holds the Chair of Biochemistry at St Mary's School of Medicine in the University of London. His is a specialty which poses hard questions, particularly when DNA experimentation is married to IVF techniques.

With the identification of 'defective' genes, are we always justified in the destruction of the defective embryo or fetus? There would appear to be community support for amniocentesis and abortion of a Down's syndrome fetus. But how far could this procedure be extended to destruction, for example, of an embryo or fetus because coronary disease is found to be present in a gene? Because the fetus is a girl? Because the fetus is unlikely to be a perfect, handsome or beautiful 'consumer product' human specimen?

Professor Williamson denied the suggestion that DNA techniques become involved in the quest for 'perfection' in human babies. But certainly, his specialty aims to take a number of presently random chance factors out of the future human population.

Professor Margot Jefferys, Emeritus Professor of Medical Sociology, Bedford College, London, chaired the session on social factors and implications. She made a number of telling comments.

The costs of IVF were significant, she said. And a moral and social question is raised if the procedures are not to be covered by government-funded national health schemes. Will IVF then be available only to wealthy or middle-class infertile couples?

Professor Jefferys also asked the identity question. Will IVF children regard themselves, if they discover their origin in this way, as inferior, superior or, boringly enough, just ordinary? Is there a right for such children to know that they were conceived *in vitro*? Or is it to be left to the parents' discretion?

Spurred on by reading Aldous Huxley's writings and Orwell's fantasies, is there a kind of collective community psyche which is fearful, rationally or irrationally, of mass manipulation by the use of IVF in an impersonal space world of the future?

The 'family' is itself changing in modern Western societies. This fact may make legal or ethical rules which limit IVF to, for example, 'married couples' only, inappropriate, old-fashioned or just plain unprincipled and unfair in a world of many single parent families.

Mrs Helene Hayman, a former Member of Parliament, offered a highly intelligent layman's guide through these issues. Mrs Hayman wanted to see IVF on the National Health Service (NHS). She said that it was impossible to set priorities in the provision of health services. Yet this assertion was a denial of the fundamental economic problem and the obligation which governments of all persuasions and their bureaucracies had, to divide up the limited public funds available. Economic priorities were set. What might legitimately be demanded was that these priorities, and the principles by which they were

decided, were exposed to public gaze and evaluation.

Mrs Hayman sought to explain her opposition to surrogate motherhood as an adjunct to IVF. She was properly concerned about the danger of uninformed consent on the part of the surrogate mother and commercialism in the form of 'womb leasing'. However, these identified problems could probably be cured by legal rules and procedures. At heart, it was Mrs Hayman's third reason that raised the hard issue. This was that 'instinctively' she found the procedure of surrogate motherhood objectionable. To what extent, she asked, did the strong feeling of revulsion of at least some people, including thoughtful people, not immediately involved, warrant the law intervening between consenting adults perfectly happy to participate?

Professor G Duncan Mitchell, a sociologist from Exeter University, then stirred the conference with a number of provocative points:

If IVF techniques spread, will it be necessary for our societies to take special protection against accidental incest?
Does IVF undermine the trusting family unit by its tendency to encourage secrecy as between family members ie parents who will not frankly inform their children of the manner of their conception?
Will we ever get to the point of artificial insemination or IVF by mail order? Already in the United States at least one clinic has been established to provide the sperm of Nobel scientists for AID procedures.
If the procedures of IVF flourish, may they not threaten the genetic integrity of the family unit as the stable norm in Western societies?

Dr John Loudon vividly illustrated the relatively weak armoury of the organised medical profession when tackling radical new developments such as IVF. On matters of ethics, doctors might ask: is anyone's opinion as good as the next man's? Ethics committees could ruminate and draw up guidelines, but unless a law was broken, it would take a tough-minded peer group then to interfere with a dedicated scientist who was simply trying to help his patients. Father John Fleming urged an approach of conservative caution as one appropriate for the professions to adopt. [But since Galileo and, more lately, Simpson, Western communities have, for the most part, learned to be cautious about attempted scientific moratoria.]

Lord Ennals predicted that those who wait for legislation on this subject in Britain will wait for five years or more, in other countries it may take longer still.

The session on the ethics of IVF was opened by a brilliant exposition of the moral philosopher's approach by Professor Richard Hare, formerly White's Professor of Moral Philosophy at Oxford University. Professor Hare proposed a four-stage approach to examining a new ethical problem such as IVF:

What are the reasons behind any relevant old principle, such as the ethical rule against adultery?
Do the same reasons still hold in the new case?
Will relaxation lead to a 'slippery slope'?
If not, can we make an exception to the old rule, if the result of doing so is better than not doing so?

Dr Raanan Gillon, Editor of the *Journal of Medical Ethics*, presented a competing philosophical approach. It was the approach of the intuitionist. Dr Gillon told us not to be too worried about slippery slopes. Like skiers in the soft snow, we may make appropriate manoeuvres and decisions. But where does intuition take us as to what Mgr Michael Connelly, Secretary General to the Catholic Bishops' Joint Committee on Bioethical Issues for England and Wales, called the sixty-four-thousand-dollar question, and what the Right Reverend Professor G R Dunstan later called the 'inescapable question?' Do we, like Catholics and others, feel intuitively that we must stress individual human respect starting inseparably from the moment of conception? Or do we, like Jeremy Bentham and Professor Peter Singer, find ourselves led by intuition to adopt a criterion of sentience? Or do we, like Dr Gillon, accept a test of 'personhood'?

Dr J Farber, of the Belgian Conseil National Ordre des Medecins, was provoked by these remarks to urge that the distinction should be drawn between the 'beginning of life' and the 'beginning of life as an independent human being'. Legal and moral consequences, according to this view, should only attach to the second 'beginning'. But by what criterion is it to be judged to differ from the first, I ask. Dr Elliot Philipp, consultant obstetrician to several London hospitals and Professor J Schenker, an Israeli Talmudic expert, took us through the intricacies of Jewish Rabbinical teaching. This begins with the first commandment to be found in the Bible, namely to be fruitful and multiply. But beyond that commandment, with its presumption in favour of life and of the human family, much else is unclear.

The Right Reverend Monsignor Michael Connelly urged attention to the causes of infertility, particularly venereal disease, abortion and IUDs. Yet it does seem unlikely that the sexual revolution witnessed in this generation will somehow be rolled back. In these circumstances medicine, law and even theology would appear bound to address the society we have, with all its foibles, rather than to hope, against all the odds, that the good old days of sexual abstinence would return. Mgr Connelly seemed to contemplate as morally acceptable, the simple family-saving case of IVF, ie implantation of all embryos created by husband and wife bound together by marriage. But beyond that, the 'synthetic' production of human life was not, in the Catholic view, to be countenanced.

Professor G R Dunstan an Anglican and emeritus professor of moral and social theology in the University of London, reviewed the Christian tradition concerning the moral status of the developing embryo. (See also pages 38–44 of this issue. Editor). He stressed

the need for respect for individual moral judgements of individual patients caught up in the quandaries of infertility.

In the final session, on the law, Miss Eleanor Platt QC outlined the law in England as it is and as it affects IVF procedures. Mr Douglas Cusine, Senior Lecturer in Law, University of Aberdeen, then addressed the problems of doctors brought before the courts. Specifically, he examined the potential liability of medical practitioners in the area of negligence, as for example in the case of negligent laparoscopy. Mr Cusine expressed a strong preference for guidelines laid down by medical bodies rather than legislation laid down by Parliament.

Sir David Napley, a past President of the English Law Society, then examined the interests which the law should protect. Without claiming that lawyers were necessarily the best persons to prescribe a framework for legislation, Sir David proceeded to offer his suggestions:

A child born of the sperm and egg of married parents should enjoy all the rights and privileges of a natural child of that family.
It should be a serious criminal offence to implant a fertilised ovum in a woman without her consent or by fear, fraud or duress.
It should be a serious offence to fertilise without the full consent of the donors of the ova and sperm.
Surrogate motherhood performed for money should be forbidden, other than in the case of reimbursement of necessary expenses.
The right to engage in IVF should be limited to properly and specially trained persons.
If a child when delivered is abnormal, he or she should be able to recover from those responsible and the onus should be on the IVF operator to establish no lack of reasonable skill and care.
It should be a serious criminal offence to develop a human embryo to full maturity outside the body of a woman.
Fertilisation outside marriage should be forbidden under pain of substantial penalties.
All rights of inheritance and title should derive from being a member of the family and should not depend on the manner of conception.
It should not be 'abortion', in law, to terminate the growth of an embryo before it is implanted in the host mother.

Many participants felt sympathy for particular suggestions here. But equally, others asked for an indication of the principles by which specific rules were drawn up. For example, in a secular community, with widespread and growing community acceptance of *de facto* relationships, some would question the justice of limiting the publicly funded facilities of IVF to married couples only.

In the final paper, I outlined the debate that had followed the Wolfenden report on homosexual offences and prostitution, concerning the limits of the role of the State in the enforcement of personal morality. In the new bioethical area, are there matters which 'crudely and bluntly' are not the law's business? Should the law intervene to prohibit or to facilitate IVF and its ancillary developments? Or should the role of the law be limited strictly to sorting out the consequences of IVF on such matters as the child's identity, the passing of property and the rights of parents and donors?

The need to develop institutional means of responding to bioethical questions is plainly urgent. For the good health of the rule of law, whether in Britain, Australia or elsewhere, it is necessary to give urgent attention to the development of institutions which will be adequate to respond to the numerous problems now being presented by medical and other sciences.